

# **EXHIBIT A**



## APPEARANCES

For the Plaintiff  
Nwauzor, et al.:

JAMAL N. WHITEHEAD  
ADAM J. BERGER  
Schroeter Goldmark & Bender  
810 Third Avenue  
Suite 500  
Seattle, Washington

For the Plaintiff  
State of Washington:

ANDREA BRENNEKE  
LANE POLOZOLA  
MARSHA J. CHIEN  
800 Fifth Avenue  
Suite 2000  
Seattle, Washington

For the Defendant  
The GEO Group:

LAWRENCE D. SILVERMAN  
ADRIENNE SCHEFFEY  
Akerman LLP  
1900 Sixteenth Street  
Suite 1700  
Denver, Colorado

JOAN K. MELL  
III Branches Law PLLC  
1019 Regents Boulevard  
Suite 204  
Fircrest, Washington

MORNING SESSION

APRIL 28, 2021

THE COURT: All right. This is Cause Nos. 17-5769 and 17-5806 combined for this hearing. I should first identify -- I guess we have a lot of people on the call today, but I want to be sure that we have identified the people that will be actually involved here.

For the class, Mr. Whitehead, are you the spokesman?

MR. WHITEHEAD: Yes, Your Honor.

THE COURT: You are who I call on?

MR. WHITEHEAD: Yes, Your Honor.

THE COURT: For the State --

I'm sorry, go ahead.

MR. WHITEHEAD: I was going to point out for the record, I am joined by my colleague, Adam Berger.

MR. BERGER: Good morning, Your Honor.

THE COURT: Good morning.

For the State, who speaks for the State today?  
Mr. Polozola?

MS. CHIEN: This is Marsha Chien. I'll be speaking for the State along with my colleague, Andrea Brenneke.

THE COURT: Mr. Polozola, you are in the back seat today?

MR. POLOZOLA: That's right, Your Honor. Thank you.

THE COURT: For GEO, Ms. Mell?

1 MS. MELL: Yes, Your Honor. I am joined by my  
2 colleagues Adrienne Sheffey and Larry Silverman. We divvied  
3 things up since we have a lot to get through today. We will  
4 try not to double team for certain, but you may hear from  
5 each of us. We will make it clear who is going on what.

6 THE COURT: My staff is here. We are on the record.  
7 The court reporter is present, along with my clerk and my law  
8 clerk are on the call.

9 This hearing was set today to deal with exhibits. There  
10 are other things that have been filed that I think require us  
11 to identify and deal with first. We will come back to  
12 exhibits.

13 First on my list, there is a motion filed to dismiss the  
14 class representative of Aguirre-Urbina. I gathered that  
15 there is some objection to that from the defendant.

16 Do you anticipate an objection to that motion, Ms. Mell?

17 MS. MELL: Yes, Your Honor, we'll be briefing that.  
18 There is a number of prejudicial facets to that motion.

19 THE COURT: All right. It is, I assume, noted on the  
20 calendar and you will file your response and so forth in  
21 accordance with the rules.

22 Now, there has been a lot of discussion here, and in  
23 particular a motion for clarification about the format for  
24 this trial. I need to fill you in on some things that you  
25 may not be aware of.

1 trial in Phase 3 on that. A lot of the evidence is  
2 overlapping. To the extent we have ongoing practices at GEO  
3 which have continuity, and to the extent that the issues  
4 related to the work program and (inaudible) and relationships  
5 are significant, we should be entitled to show how GEO  
6 actually developed its programs, controlled its programs  
7 throughout that period, so they are not just isolating things  
8 towards the end. I do not believe that the issue of start  
9 time actually makes sense for this trial. If it does, we  
10 would request we have an opportunity to brief that.

11 MS. SHEFFEY: If I could briefly respond, I would  
12 state that my understanding and GEO's understanding of Phase  
13 1 is it is the minimum wage liability only trial. My  
14 objection is to using it in this phase, not necessarily the  
15 State's unjust enrichment phase which comes later. There is  
16 nothing in (inaudible) claims or the State's claims that  
17 extend their statute of limitations beyond three years before  
18 the date of filing, so that would be September 20th, 2014 at  
19 the earliest date for minimum wage claims. The authority for  
20 that is RCW 4.16.080, Section 3, which states there is a  
21 three-year statute of limitations on all claims.

22 I think limiting evidence in that way will also  
23 significantly reduce the exhibit list to only what is  
24 relevant to the time period and the represented class.

25 MS. BRENNEKE: Your Honor, however, GEO has raised

1 issues about practices and its purported limitations to  
2 paying the minimum wage. We are entitled to show evidence  
3 prior to the statute of limitations that goes to the issue of  
4 liability in the Minimum Wage Act context. All of this  
5 evidence is relevant to whether or not GEO has permitted  
6 detainees to work and under what circumstances, and has it  
7 followed the minimum wage during that time period.

8 MS. SHEFFEY: Your Honor, I would add one response.  
9 One, there is no -- it is not in dispute that GEO has always  
10 paid a dollar a day to detainees. They have never paid  
11 minimum wage to detainees, no matter how far you go back.

12 To the extent we are talking about documents from 2005 or  
13 2006 and say those apply to 2014 or 2017, that is not as  
14 easily shown from the documents I reviewed. I went through  
15 every exhibit one by one and wrote individual notes in all of  
16 them, and I could not see anything in the deposition or  
17 otherwise that would easily show those practices carried  
18 through to the relevant class period. I think this would  
19 simplify the issues before the jury.

20 MS. BRENNEKE: Your Honor, if I may. I also want to  
21 point out that the State of Washington is bringing this as an  
22 enforcement action. There is no statute of limitations under  
23 RCW 4.6.160. Also, some of the evidence shows that GEO in  
24 fact did pay more than a dollar a day to detainees. We are  
25 entitled to full evidence with regard to that practice at GEO

1 and how it has evolved over time.

2 MS. SHEFFEY: I think my other objections are noted.  
3 I note I don't think there is any dispute that GEO has never  
4 paid minimum wage to detainees going backward. I don't know  
5 the probative value of whether they paid two or three  
6 dollars, what that has to do with whether they were paid  
7 minimum wage.

8 THE COURT: I would prefer that we go one lawyer and  
9 then the other lawyer, and then the rebuttal lawyer and then  
10 quit.

11 First, the setting up -- well, the first trial will set up  
12 the second and third phases. There is a practical angle that  
13 some things might be admissible in the second or third phase  
14 but are only marginally relevant in this phase, it is just  
15 practical to admit them. On the other hand, I do not want to  
16 clutter the record in this first phase with a bunch of stuff  
17 about damages.

18 You know, Ms. Sheffey says they never paid minimum wage.  
19 That is one witness, one question, one answer, and it is in  
20 the record. You know, I don't know why we need a bunch of  
21 exhibits to further prove that. That is not a definitive  
22 answer, but I think those exhibits probably should be limited  
23 to what is necessary to show the issues in this first case  
24 and not a bunch of other stuff.

25 MS. BRENNEKE: Your Honor, may I address the Court?



1 THE COURT: Who is talking?

2 MS. BRENNEKE: Andrea Brenneke.

3 THE COURT: Sorry. I have to see where the yellow  
4 framework is. Go ahead.

5 MS. BRENNEKE: The issue of -- the issue that they  
6 have not paid minimum wage, I think is not disputed.

7 The other issues are very complex, which is one of GEO's  
8 primary defenses is that it cannot pay minimum wage or should  
9 not pay minimum wage. There have been times where indeed it  
10 has paid -- they have also said they can only pay \$1 or that  
11 there is a minimum of a dollar, but -- and there is evidence  
12 that it is not a minimum -- it is a minimum. It is a floor.  
13 It is not a maximum. We are entitled to put on the evidence  
14 that they had the opportunity, the legal opportunity to pay  
15 the minimum wage and, in fact, the duty to comply with state  
16 law. Where they are making the case, and we expect will make  
17 the case as they have before, is that their reimbursement is  
18 in fact a ceiling and not a minimum or a floor.

19 So it is very important to the themes of the case that we  
20 be able to put on the evidence of the fact that while they  
21 haven't paid minimum wage, they have paid more than a dollar  
22 a day, and that evidence spans back in time.

23 You know, obviously, Your Honor, we have attempted to  
24 reduce our witnesses significantly. We have identified  
25 issues and documents that are Phase 2 and Phase 3 only. We

1 are very mindful of trying to streamline this. That is part  
2 of why we have the categories and would be offering  
3 opportunities perhaps for us to look at ways of  
4 representative documents. For example, as Your Honor said,  
5 you know, some of these documents show how GEO worked and  
6 operated, batch summaries, invoices to ICE. It is possible  
7 we could use a few of those and not all of those to make the  
8 point that these practices had continuity over time.

9 Your Honor, it is important, I think, that we establish  
10 the facts that they did have these practices over time and  
11 what they were in order to make our full case and be able to  
12 put on the case that the State is bringing here to enforce  
13 the minimum wage.

14 MS. SHEFFEY: May I briefly respond, Your Honor?

15 THE COURT: I guess so.

16 MS. SHEFFEY: My response would be that I think we  
17 are now talking in the abstract. Your Honor has already  
18 ruled on the Motion in Limine No. 7 saying GEO essentially  
19 can't argue that they were required to pay only a dollar a  
20 day because there is evidence of more. I don't think that  
21 justifies opening the floodgates to evidence going back from  
22 2006 to 2014 in this phase of trial. I think we need to be  
23 cognizant of what documents are coming in and what documents  
24 are relevant.

25 To the extent GEO had practices outside of 2014 and

1 plaintiffs' claims only go back to 2014, I think GEO's  
2 defenses also only go back to 2014.

3 If GEO is being held responsible for a larger period of  
4 time in this phase of trial, that is not the unjust  
5 enrichment phase which I understand is separate, we need to  
6 know what that time period is so we can determine relevance  
7 of all documents.

8 THE COURT: Bear in mind, I don't have these exhibits  
9 right in front of me to go through them one by one. I can't  
10 give you definitive rulings without doing that and looking at  
11 the exhibits.

12 MS. BRENNEKE: May I remind the Court that the State  
13 of Washington's claim does begin at the inception of GEO's  
14 practices and its unlawful behavior. It is an enforcement  
15 action, and there is no statute of limitations.

16 The idea that now without a motion, without briefing, GEO  
17 is trying to limit the evidence we have of this pattern and  
18 practice is concerning, and I think improper. Certainly, I  
19 would like the opportunity to brief this if GEO persists in  
20 trying to limit things by time frame.

21 THE COURT: As I indicated, I can't give you a  
22 definitive ruling on this. You can brief it further if you  
23 want.

24 What I can tell you is that I want to limit things beyond  
25 going back in history as much as we can. If there is

1 hope this has been helpful. I'm sorry I am ruling in a  
2 tentative way because everything requires necessary  
3 foundation. You should also remember that even if things are  
4 ruled admissible, the jury has to know what they are so they  
5 have to be identified to the jury, even if they have been  
6 admitted.

7 Okay. See you all next time. Thank you.

8 (The proceedings adjourned.)

9  
10 C E R T I F I C A T E

11  
12  
13 I certify that the foregoing is a correct transcript from  
14 the record of proceedings in the above-entitled matter.

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16  
17  
18 /s/ *Angela Nicolavo*

19 ANGELA NICOLAVO  
20 COURT REPORTER  
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